

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
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Frédéric FORTIN et al.)	Group Art Unit: 3775
)	
Application No.: 10/505,469)	Examiner: Woodall, Nicholas W.
)	
Filed: August 20, 2004)	
)	
For: FLEXIBLE VERTEBRAL LINKING DEVICE)	Confirmation No.: 4004

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(b)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), Applicant brings to the attention of the Examiner the listed documents on the attached PTO SB/08 Form. This Information Disclosure Statement is being filed before the mailing date of a first Office Action after the filing of a Request for Continued Examination in the above-referenced application.

Copies of the listed foreign and non-patent literature documents are attached.

Copies of the U.S. patent publications are not enclosed.

Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

U.S. Patent Application Publication No. 2007/0149909 to Fortin et al. is related to U.S. Patent Application No. 10/524,174, which is commonly assigned to the Assignee of

the present application. Likewise, U.S. Patent Application Publication No. 2005/0261685 to Fortin et al. is related to U.S. Patent Application No. 10/760,075, which is commonly assigned to the Assignee of the present application.

The United States Court of Appeals for the Federal Circuit held in *Dayco Products, Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 U.S.P.Q.2d 1801 (Fed. Cir. 2003) that an "adverse decision" by another examiner may meet the materiality standard under the amended Rule 56, and thus, Applicants should disclose prior rejections of "substantially similar claim[s]" to the Office. Accordingly, although Applicants are not representing that the Office Actions in the co-pending applications are material to the present application and are not admitting that any of the other claims are substantially similar, out of an abundance of caution, Applicants have listed the Office Actions in co-pending Application Nos. 10/524,174 and 10/760,075 on the attached PTO/SB/08 and copies are attached.

With respect to the non-English language documents, Applicants have the following remarks:

1. **FR 2 814 936**: An English language abstract of this document is submitted herewith.

2. **DE 195 00 202 A1**: An English language abstract of this document is submitted herewith.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claim in the application and Applicant determines

that the cited documents do not constitute "prior art" under United States law, Applicant reserves the right to present to the U.S. Patent and Trademark Office the relevant facts and law regarding the appropriate status of such documents.



Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: February 6, 2009

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